IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.100 OF 2006

Nivrutti Balu Patil (deceased)
through legal heirs & Ors. ...Appellants
Vs.
Smt Janabai Daulu Patil (deceased)
through legal heirs & Ors. ...Respondents

Mr J.P. Akolkar for the Appellants.
None for the Respondents.

CORAM : A. S. OKA, J.
DATE : APRIL 18, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellants. The Appellants are the original Plaintiffs. The Appellants filed the suit for removal of encroachment allegedly made by the Respondents to the extent of four gunthas. The suit was decreed by the Trial Court. In Appeal preferred by the Defendants, the first Appellate Court has interfered and decree for possession has been set aside. One of the findings recorded by the first Appellate Court is that the Survey Officer who carried out survey did not give notice to the Defendants before carrying out survey. The first Appellate Court held that as the survey on the basis of which encroachment is sought to be proved was behind the back of the Defendants, a Decree for removal of encroachment on the basis of

said survey cannot be passed.

2. The learned Advocate appearing for the Appellants has invited my attention to the deposition of the surveyor. She pointed out that the surveyor has stated in the examination-in-chief that before carrying out survey and measurement, he served notice to the owners of the adjoining lands. She submitted that as the Defendants were owners of the adjoining lands, the reference made by the surveyor in his examination-in-chief to the service of notice to the adjoining owners is also to the Defendants. She submitted that Trial Court has recorded a categorical finding that the surveyor had served notices to all concerned persons including the Defendants. She submitted that finding of the Appellate Court on this aspect is perverse.

3. I have considered the submissions. It must be noted that in the examination-in-chief, the surveyor has not specifically stated that he served notices to the Defendants. In the cross-examination, the surveyor admitted that whether he had issued notices to the owners of the adjoining properties or not

cannot be definitely stated on the basis of the record which was available before the Court. It is thus obvious that the surveyor did not produce any record to show that notices were duly served on the owners of all the adjoining properties. As stated earlier, the surveyor has not at all deposed that a notice was given to the Defendants. Even assuming that the Defendants can be treated as owners of the adjoining properties, it is obvious from the cross-examination of the surveyor that record containing acknowledgments of service of notices was not at all produced by the surveyor before the court. If this factual position emerges from the evidence of the surveyor, it is obvious that no fault can be found with the finding of the Appellate Court that the surveyor carried out survey and measurement without notice to the Defendants. The map drawn by the surveyor is the only basis on which prayer for removal of acknowledgment has been made. The Appellate Court was right in discarding the survey on the ground that no notice of survey was given to the Defendants. No substantial question of law arises. The Second Appeal is dismissed. No orders as to costs.

JUDGE